

**IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2815 OF 1991

Bhaskar Tulshiram Bhagat Indian Inhabitant, Aged about 31 years, R/o Yeola, District Nasik	.. Petitioner.
Vs.	
1. Gangasagar Talao Trust Public Trust, Yeola, District Nasik through its trustees	..
2. Suhas Tribuvandas Patel since deceased and in his place - Nos.2A.	..
2A. Dhawalchandra T.Patel R/o Hundiwal Lane, Yeola, District Nasik Managing Trustee.	..
3. Shankardas Murlidhar Patel Age about 55 years R/o Ranapratap Road, Yeola, District Nasik	..
4. Popatlal Murlidhar Gujarati Aged about 57 years, Mamledar Lane, Yeola, District Nasik	..
5. Atmesh Krushnadas Patil Age about 26 years R/o 2412, Hundiwala Lane, Yeola, District Nasik Trustee.	..
6. Prabhakar Bapurao Kasar, Age about 58 years, President. Yeola Municipality, Yeola, District Nasik	..
7. Dinkar Bajirao Patil Vice President, Age about 58 years, Yeola, District Nasik Trustee.	..
8. Shaikh Kasam Ghasibhai Age about 48 years, President, Water Supply Committee Yeola Municipality, Yeola, District Nasik	

Trustee.	..
9. Bhavrao Tulshiram Bhagat	
Age about 45 years	
Agriculturist,	
Yeola, District Nasik	
10. Smt.Radhabai Ramchandra	
Gaikwad,	
Yeola, District Nasik	..
11. Hausabai Sakahari Gaikwad	
R/o Babhulgaon,	
Yeola, District Nasik	..
12. Kusumbhai Damodar Mehetre	
R/o Rahuri,	
Dist. Nagar	..
13. Dagubai Dattatray Gaikwad	
R/o. Kolhar Khurd,	
Taluka Rahuri, Dist. Nagar	..
14. Punjabai Lahanu Gaikwad	
R/o.Andarsul, Taluka Yeola,	
District Nasik	.. Respondents.

Mr.Vinod S.Singh for the petitioner.
Mr.Vasant D.Shalke for respondent nos.1 and 5.

CORAM : D.B.BHOSALE, J.

DATED : 16TH DECEMBER, 2004

P.C.:

1. This petition is directed against the judgment and order dated 15.11.1988 rendered by the Commissioner, Nasik Division, Nasik in tenancy Appeal No.118 of 1984 by which the appeal filed by the petitioner was dismissed. The appeal was directed against the order dated 31.8.1964 passed by the Deputy Collector by which exemption certificate was granted under section 88-B of the Bombay Tenancy and Agricultural Lands Act (for

short "the Act").

2. The petitioner and respondent nos.9 to 14 are the heirs and legal representatives of original tenant Shri Tulsiram Dagdoo Mali alias Bhagat. Respondent No.1 is a registered trust registered under Bombay Public Trusts Act, 1960. Respondent No.2 to 8 are the trustees of the said trust. The trust had filed an application under section 88-B of the Act and in pursuance thereof exemption certificate was granted by the Deputy Collector vide order dated 31.8.1964. The exemption certificate was sought by the trust in respect of the lands in possession of the petitioners as tenants since the trust desired to float a scheme for water supply to Yeola town. The possession of the land in question was taken over by the trust on 31.4.1964. Admittedly, after obtaining possession of the lands, the trust did implement and run the scheme by constructing water reservoir. The trust deed shows that the trust was registered with that object and had decided to spent Rs.1,25,000/- for the construction of a small dam reservoir. The trust deed specifically provide that if at any time in future, the Municipality makes any better or independent arrangement for supplying water to

Yeola town the trustees may apply to the competent court for using the land in question for any such similar purpose. It may be made clear that the challenge was not against the issuance of the exemption certificate by which the lands in question stood exempted from prescribed provisions of the Act.

3. The petitioner filed an application under section 88-D of the Act seeking possession of the lands in question on the ground that Yeola municipality has made better and independent arrangement for supplying water to Yeola town and, therefore, land in question is no more required for the said purpose and is liable to be restored to the petitioner. The application came to be rejected by the impugned order. It is not clear that the scheme for water supply implemented by Yeola Municipality is sufficient enough to cater the needs of whole of the town. In other words, it is not clear as to whether the purpose for which the exemption certificate under section 88-B was sought no more exists and, therefore, the lands are not required by the trust for the said purpose. Moreover, clause 14 of the trust deed was also taken into consideration while rejecting the

application under section 88-B which provides that the trustees can use the land for any such similar purpose if the purpose for which the possession was obtained does not exist. Against this backdrop I heard the learned counsel for the parties for quite sometime. Mr.Singh, learned counsel for the petitioners submitted that the trust does not require land in question any more since the Yeola Municipality run a scheme for water supply to Yeola town and, therefore, the trust is unable to look after the property. On the other hand Mr.Shalke, learned counsel for the respondents submitted that the water supply scheme is still operational and as a matter of fact the trust proposes to expand it further. He denied contentions of the petitioner that the trust is unable to look after the property. Section 88-B of the Act empowers the Government to withdraw exemption granted under section 88-B of the Act, if the State Government is satisfied in case of lands referred to in clause (b) of section 88-B that the trust is unable to look after the property or there is a mismanagement and/or there are disputes between the trust and the tenants. The only submission advanced by the learned counsel for the petitioners is that the trust is unable to look after the property and that

there was dispute between the trust and the tenants. Except a bare statement, I did not find any material whatsoever in support of his submission nor could he point out anything from the record in support thereof. As a matter of fact the findings recorded by the Commissioner clearly show that the scheme for water supply provided by the trust is operational and that the water supply scheme of the municipality is not sufficient enough to cater the needs of Yeola town. The order records that under the scheme of municipality only 2720 taps have been provided. Apart from the findings of fact recorded by the authority below, it would not be possible to accept a bare submission of Mr.Singh, learned counsel for the petitioner that since the municipality has implemented a scheme for water supply, the trust is unable to look after the property and there are disputes between the trust and the tenants. No material is produced by the petitioner in support of his contentions. Moreover, under the trust deed, the trust is entitled to make use of the land for similar purpose, if the purpose for which possession of the land was taken does not exists. In the circumstances the writ petition is dismissed. Rule is discharged. No costs.

(D.B.Bhosale, J.)